



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0009]

Notification of Decision to Authorize the Importation of Fresh Cape Gooseberry Fruit From Ecuador to the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rulemaking action; notification of decision to import.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh cape gooseberry fruit from Ecuador. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh cape gooseberry fruit from Ecuador.

DATES: The articles covered by this notification may be authorized for importation after [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart L—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS then publishes a notice in the *Federal Register* announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable.

On April 20, 2018, we published in the *Federal Register* (83 FR 17503-17506, Docket No. APHIS-2016-0009) a proposal¹ to amend the regulations by allowing for the importation of commercially produced fresh cape gooseberry fruit (*Physalis peruviana*) from Ecuador into the continental United States.

We solicited comments concerning our proposal for 60 days ending June 19, 2018. We received two comments by that date. They were from the national plant protection organization (NPPO) of Ecuador and a State department of agriculture and are discussed below.

One commenter stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the issuance of any proposals such as the one finalized by this document.

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0009>.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of fresh cape gooseberry fruit from Ecuador, it is outside the scope of the proposed action.

The PRA that accompanied the proposed rule identified *Ceratitis capitata* (Medfly) as the one quarantine pest that could be introduced into the United States in consignments of fresh cape gooseberry fruit from Ecuador. The commenter observed several areas of phytosanitary risk as outlined in the PRA:

- Due to the short distance between Ecuador and the continental United States, the duration of low temperatures during transport does not control, reduce, or eliminate this pest species. Fruit fly larvae within fruits can survive shipments when exported without mitigating treatment, as it is shown by numerous interceptions at U.S. ports-of-entry with other fruits.
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- Ecuador does not have a point-of-origin protocol for fruit inspection. In addition to this, internal feeders, such as fruit flies, are difficult to detect during non-targeted USDA inspection procedures at ports-of-entry.

While it is true that the aspects of the PRA highlighted by the commenter led us to classify the pest risk potential associated with Medfly as high, pest risk potential is a baseline estimate of the risks associated with importation of the commodity in the absence of phytosanitary mitigation measures beyond standard post-harvest processing. That is why we are

only allowing for the importation of fresh cape gooseberry fruit from Ecuador into the continental United States if it is produced under a systems approach or subject to cold treatment or irradiation in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual² and 7 CFR part 305. These measures effectively mitigate the risks described in the PRA and pointed out by the commenter.

Only commercial consignments of fresh cape gooseberry fruit from Ecuador will be allowed to be imported into the continental United States. The commenter posited that if non-commercially produced fresh cape gooseberry fruit were mixed with or mistaken for commercially produced fresh cape gooseberry fruit, the likelihood of Medfly infestation would be very high.

Since fresh cape gooseberry fruit from non-registered places of production present a greater pest risk than does fruit grown in registered places of production, we believe that it is unlikely that the growers and packers in a registered place of production would allow their entire export operation to be jeopardized by allowing potentially infested fruit from nonregistered places of production to be commingled with their export-quality fruit. Additionally, this rule requires the NPPO of Ecuador to provide an operational workplan to APHIS regarding the day-to-day administration of the export program for cape gooseberries from Ecuador, and also requires APHIS approval of the operational workplan. We will not approve an operational workplan unless it provides safeguards against the commingling of commercially produced and non-commercially produced cape gooseberries. Finally, we note that all shipments of cape gooseberries are subject to inspection at ports of entry into the United States in accordance with our general requirements for the importation of fruits and vegetables, which are found in

² The PPQ Treatment Manual may be found on the internet at https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

§ 319.56-3. Among other benefits, port-of-entry inspections allow us to verify an exporting country's adherence to the terms of the regulations on an ongoing basis.

We proposed to require the use of trapping to monitor the places of production within low prevalence areas as part of the systems approach to mitigate the risk posed by Medfly. While we did not specify the intervals at which the fruit fly traps would be required to be placed to demonstrate place of production freedom from Medfly in the proposed rule, the risk management document (RMD) did provide a recommended trapping protocol.

The NPPO of Ecuador suggested an additional fruit fly trapping protocol, scaled specifically for smaller production sites, which would allow more producers to potentially participate in the export program.

While the RMD provides a recommended trapping protocol, the specific trapping requirements will be set forth in the required operational workplan established between APHIS and the NPPO of Ecuador, and therefore may differ from the recommendations set out in the RMD. We will evaluate the trapping protocol suggested by the NPPO during the development of the operational workplan.

Fresh cape gooseberry fruit that comes from a place of production that does not qualify as a pest free place of production in an area of low pest prevalence may still be exported to the continental United States subject to cold treatment or irradiation treatment in accordance with the PPQ Treatment Manual and 7 CFR part 305. Another commenter said that it was not clear whether these treatments would be administered in Ecuador, while consignments are in transit, or upon arrival in the United States.

Under the regulations, treatment may occur at any of the stages identified by the commenter. However, because Ecuador does not currently have APHIS-approved irradiation or

cold treatment facilities, and because the journey from Ecuador to the United States is generally significantly shorter than the length of time necessary for the required cold treatment, we anticipate that most treatments will be administered in the United States.

The commenter concluded that, due to the risk factors described by the PRA, fresh cape gooseberry fruit from Ecuador should not be allowed into the State of Florida and other ports of entry south of the 39th parallel given that the climate in those areas is conducive to the establishment of Medfly.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh cape gooseberry fruit from Ecuador. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule³ that revised the regulations in § 319.56-4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements database (FAVIR). With those changes to the regulations, we cannot issue the final regulations as contemplated in our April 2018 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

³ To view the final rule, go to <https://www.regulations.gov/docket?D=APHIS-2010-0082>.

Therefore, in accordance with the regulations in § 319.56-4(c)(3)(iii), we are announcing our decision to authorize the importation into the continental United States of fresh cape gooseberry fruit from Ecuador subject to the following phytosanitary measures, which will be listed in FAVIR, available at <https://epermits.aphis.usda.gov/manual>:

- The NPPO of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to comply with the phytosanitary requirements. APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.
- The fresh cape gooseberry fruit may be imported in commercial consignments only.
- The production site where the fruit is grown must be registered with the NPPO of Ecuador.
- Harvested fresh cape gooseberry fruit must be placed in field cartons or containers that are marked to show the official identification of the production site.
- All openings to the outside of the packinghouse where the fruit is packed must be covered by screening or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the fresh cape gooseberry fruit is packed.
- Each consignment of fresh cape gooseberry fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador that contains an additional declaration stating that the fruit was produced in accordance with 7 CFR 319.56-4.
- To be eligible for importation, the fresh cape gooseberry fruit must either be treated or produced and shipped under the systems approach.

- Systems approach: Fresh cape gooseberry fruit may be imported without treatment if it is subject to a systems approach consisting of the following: Low-prevalence production site certification, fruit fly trapping, and phytosanitary inspection.
- Treatment: Fresh cape gooseberry fruit that does not meet the requirements of the systems approach may be imported into the continental United States if the fruit is subject to cold treatment or irradiation treatment in accordance with 7 CFR part 305. If the irradiation treatment is completed in Ecuador, each consignment of fresh cape gooseberry fruit must be accompanied by documentation to validate foreign site preclearance inspection of the consignment.

In addition to these specific measures, fresh cape gooseberry fruit from Ecuador will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this notification are covered under the Office of Management and Budget (OMB) control number 0579-0049. We estimate these burden activities to be 1,199 hours, which will be added to 0579-0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this

notification, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of September 2019 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019-20096 Filed: 9/18/2019 8:45 am; Publication Date: 9/19/2019]